

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to removal of third-party administrator
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 514I.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 514I.

Purpose and Summary

These proposed amendments implement 2019 Iowa Acts, House File 625, which removed the third-party administrator for HAWK-I from Iowa Code chapter 514I. References to the third-party administrator are proposed to be deleted from Chapter 86. The proposed rule making also amends references that are not referenced correctly in the rules.

Fiscal Impact

This rule making is expected to be budget-neutral. There will be savings associated with the HAWK-I third-party administrator contract that will shift to the Department to cover the cost of determining HAWK-I eligibility, payment of claims and administration of the program.

Jobs Impact

This rule making may result in loss of some jobs for the individuals working for the third-party administrator.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 86**, preamble, as follows:

PREAMBLE

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program and establish requirements ~~for the third-party administrator responsible~~ for the program administration and for the participating health and dental plans that will be delivering services to the enrollees. The purpose of this program is to provide transitional health and dental care coverage to children who are ineligible for Title XIX (Medicaid) assistance as set forth in this chapter. This chapter shall be construed to comply with all requirements for federal funding under Title XXI of the Social Security Act or under the terms of any applicable waiver of Title XXI requirements granted by the Secretary of the U.S. Department of Health and Human Services. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XXI or the terms of any applicable waiver, the requirements of Title XXI or the terms of the waiver shall prevail.

ITEM 2. Amend rule **441—86.1(514I)**, definitions of “Contract,” “Good cause,” “Health insurance coverage,” “Health Insurance Marketplace,” “Institution for mental diseases,” “Modified adjusted gross income,” “Nonmedical public institution” and “Third-party administrator,” as follows:

“*Contract*” shall mean the contract between the department ~~and the person or entity selected as the third-party administrator or the contract between the department~~ and the participating health or dental plan for the provision of medical or dental services to HAWK-I enrollees for whom the participating health or dental plans assume risk.

“*Good cause*” shall mean the family has demonstrated that one or more of the following conditions exist:

1. to 3. No change.

4. There was a failure to receive the ~~third-party administrator’s~~ department’s request for a reason not attributable to the enrollee. Lack of a forwarding address is attributable to the enrollee.

“*Health insurance coverage*” shall mean health insurance coverage as defined in 45 CFR Section 144.103, ~~as amended to October 1, 2008.~~

“*Health Insurance Marketplace*” or “*Exchange*” shall mean the entity authorized under 42 U.S.C. Section 18031(d)(4)(F) ~~as amended to April 1, 2013,~~ to evaluate and determine eligibility of applicants for Medicaid, the Children’s Health Insurance Program (CHIP), and other health programs.

“*Institution for mental diseases*” shall mean a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services as defined at 42 CFR Section ~~435.1009 as amended November 10, 1994~~ 435.1010.

“*Modified adjusted gross income*” shall mean the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603 ~~as amended to April 1, 2013.~~

~~“Nonmedical public~~ *Public institution*” shall mean an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control as defined in 42 CFR Section 435.1009 ~~as amended November 10, 1994~~ 435.1010.

~~“Third-party administrator” shall mean the person or entity with which the department contracts to provide administrative services for the HAWK-I program.~~

ITEM 3. Amend subrule 86.2(9) as follows:

86.2(9) *Inmates of ~~nonmedical public institutions~~.* The child shall not be an inmate of a ~~nonmedical public institution as defined at 42 CFR Section 435.1009 as amended November 10, 1994~~ 435.1010.

ITEM 4. Amend subrule 86.2(10) as follows:

86.2(10) *Inmates of institutions for mental disease.* At the time of application or annual review of eligibility, the child shall not be an inmate of an institution for mental disease as defined at 42 CFR Section 435.1009 ~~as amended November 10, 1994~~ 435.1010.

ITEM 5. Amend subrule 86.3(3) as follows:

86.3(3) *Place of filing.* An application for the HAWK-I program may be filed with the ~~third-party administrator responsible for making the eligibility determination~~ department through an Internet ~~Web site~~ website, by telephone, through other electronic means, or ~~in any local or area office of the department of human services, through~~ an exchange, disproportionate share hospital, federally qualified health center, or other facility in which outstationing activities are provided.

ITEM 6. Amend paragraph **86.3(7)“b”** as follows:

b. Failure to supply the information or verification or refusal to authorize the ~~third-party administrator~~ department to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. If the requested information or authorization is received within 14 calendar days of the notice of decision on an application or within 14 calendar days of the effective date of cancellation for enrollees, the information or authorization shall be acted upon as though it had been provided timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or enrollee shall have until the next business day to provide the information.

ITEM 7. Amend subrule 86.3(9) as follows:

86.3(9) *Applicant cooperation.* An applicant must cooperate with the ~~third-party administrator~~ department in the application process, which may include providing verification or signing documents. Failure to cooperate with the application process shall serve as basis for a denial of the application.

ITEM 8. Amend paragraph **86.3(10)“a”** as follows:

a. The department ~~or the third-party administrator~~ shall mail a notice of decision to the applicant that states:

(1) The applicant meets the eligibility requirements but that no funds are available and that the applicant will be placed on a waiting list, or

(2) The applicant does not meet eligibility requirements, in which case the applicant shall not be put on a waiting list.

ITEM 9. Amend subrule 86.7(6) as follows:

86.7(6) *Enrolled in other health insurance coverage.* The child shall be canceled from the program as of the first day of the month following the month in which the department ~~or the third-party administrator~~ is notified that the child has other health insurance coverage. If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.

ITEM 10. Amend subrule 86.7(7) as follows:

86.7(7) *Admission to a ~~nonmedical public institution~~.* The child shall be canceled from the program ~~as of the first day of the month following the month in which the child enters a nonmedical public institution unless the temporary absence provisions of paragraph 86.2(3)“d” apply~~ if the child is in a public institution at the time of the annual review.

ITEM 11. Amend rule 441—86.10(514I), introductory paragraph, as follows:

441—86.10(514I) Reporting changes. Changes that may affect eligibility shall be reported timely to the department ~~or the third-party administrator~~. “Timely” shall mean no later than ten working days after the change occurred. The ten working-day period begins the first working day following the date of the change. The parent, guardian, or other adult responsible for the child shall report the change unless the child is emancipated, married, or otherwise in an independent living situation, in which case the child shall be responsible for reporting the change.

ITEM 12. Rescind subrule **86.10(1)**.

ITEM 13. Renumber subrules **86.10(2)** to **86.10(8)** as **86.10(1)** to **86.10(7)**.

ITEM 14. Amend renumbered subrule 86.10(4) as follows:

86.10(4) Decrease in income. If the family reports a decrease in income, the ~~third-party administrator~~ department shall ascertain whether the change affects the premium obligation of the family. If the change is such that the family is no longer required to pay a premium in accordance with the provisions of rule 441—86.8(514I), premiums will no longer be charged beginning with the month following the month of the report of the change.

ITEM 15. Rescind and reserve rule **441—86.13(514I)**.

ITEM 16. Amend paragraph **86.14(1)“o”** as follows:

o. Translation and interpreter services as specified pursuant to ~~the federal Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3~~ 42 U.S.C. Section 1397ee(a)(1).

ITEM 17. Amend subrule 86.15(3) as follows:

86.15(3) Premium tax. Premiums paid to participating health and dental plans by the ~~third-party administrator~~ department are exempt from premium tax.

ITEM 18. Amend subparagraph **86.15(6)“c”(2)** as follows:

(2) All health and dental plan literature and brochures shall be available in English and any other language when enrollment in the health or dental plan by enrollees who speak the same non-English language equals or exceeds 10 percent of all enrollees in the health or dental plan ~~and shall be made available to the third-party administrator for distribution~~.

ITEM 19. Amend subrule 86.15(9) as follows:

86.15(9) Records and reports. The participating health and dental plans shall maintain records and reports as follows:

a. The health or dental plan shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the health or dental plan or subcontractor of the health or dental plan, as appropriate, must maintain a medical or dental records system that:

- (1) Identifies each medical or dental record by HAWK-I enrollee identification number.
- (2) Maintains a complete medical or dental record for each enrollee.
- (3) Provides a specific medical or dental record on demand.
- (4) Meets state and federal reporting requirements applicable to the HAWK-I program.
- (5) Maintains the confidentiality of medical or dental records information and releases the information only in accordance with established policy below:

1. All medical and dental records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical or dental records information to physicians, dentists, other practitioners, or facilities that are providing services to enrollees under a subcontract with the health or dental plan. This provision also applies to specialty providers who are retained by the health or dental plan to provide services which are infrequently used, which provide a support system service to the operation of the health or dental plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff ~~and the~~

~~third-party administrator~~ assisting in the administration of the program, reviewers from the peer review organization (PRO), monitoring authorities from the Centers for Medicare and Medicaid Services (CMS), the health or dental plan itself, and other subcontractors which require information as described under numbered paragraph “5” below.

3. to 6. No change.

EXCEPTION: Written consent is required for the transmission of medical records relating to substance abuse, HIV, or mental health treatment in accordance with state and federal laws.

b. Each health or dental plan shall provide at a minimum reports and plan information to the ~~third-party administrator~~ department as follows:

- (1) A list of providers of services under the plan.
 - (2) Encounter data on a monthly basis as required by the department.
 - (3) Other information as directed by the department.
- c. No change.

ITEM 20. Amend subrule 86.15(10) as follows:

86.15(10) ~~Systems~~ System. The participating health or dental plan shall maintain data files that are compatible with the department’s ~~and third-party administrator’s systems~~ system.

ITEM 21. Amend subrule **86.19(1)**, definition of “Administrative error,” as follows:

“*Administrative error*” means an action of the department ~~or the HAWK-I third-party administrator~~ that results in incorrect payment of benefits, including premiums paid to a health or dental plan, due to one or more of the following circumstances:

1. Misfiled or lost form or document.
2. Error in typing or copying.
3. Computer input error.
4. Mathematical error.
5. Failure to determine eligibility correctly when all essential information was available to the department ~~or the HAWK-I third-party administrator~~.
6. Failure to request essential verification necessary to make an accurate eligibility determination.
7. Failure to make timely revision in eligibility following a change in policy requiring application of the policy change as of a specific date.
8. Failure to issue timely notice to cancel benefits that results in benefits continuing in error.

ITEM 22. Amend subrule 86.20(2) as follows:

86.20(2) Eligibility. Unless otherwise specified, eligibility for supplemental dental-only coverage shall be determined in accordance with the provisions of rules ~~441—86.1(514I) 441—86.2(514I)~~ through ~~441—86.12(514I), 441—86.18(514I), and 441—86.19(514I).~~

ITEM 23. Amend paragraph **86.20(3)“a”** as follows:

a. No premium is charged to families ~~who meet the provisions of subparagraph 86.8(2)“a”(1) or to families~~ whose countable income is less than or equal to 167 percent of the federal poverty level for a family of the same size using the modified adjusted gross income methodology or to an eligible child who is an American Indian or Alaska Native.